

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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JAMES WINCHESTER,

Petitioner,

vs.

MARY POTTER,

Respondent.

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CASE NO. 5:17-cv-532

OPINION & ORDER  
[Resolving Doc. [4](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On March 14, 2017, James Winchester filed a 28 U.S.C. § 2254 habeas petition.<sup>1</sup>

On August 13, 2018, Magistrate Judge James R. Knepp II recommended that the Court deny Winchester’s petition because it was not timely filed.<sup>2</sup>

Any objections to Magistrate Judge Knepp’s Report and Recommendation (“R&R”) were due by August 27, 2018. Despite the Court granting Petitioner Winchester’s motion for an extension of time to object,<sup>3</sup> neither he nor Respondent Mary Potter filed an objection to the R&R.

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a R&R to which the parties have made an objection.<sup>4</sup> Absent objection, a district court may adopt the R&R without review.<sup>5</sup> Because no party has

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<sup>1</sup> Doc. [4](#). Respondent Potter returns the writ. Doc. [12](#). Petitioner Winchester files a traverse to the return of writ. Doc. [15](#). Respondent Potter surreplies. Doc. [16](#).

<sup>2</sup> Doc. [17](#).

<sup>3</sup> Doc. [19](#).

<sup>4</sup> 28 U.S.C. § 636(b)(1).

<sup>5</sup> *Thomas v. Arn*, 474 U.S. 140, 149–52 (1985). Failure to timely object waives a party’s right to appeal the magistrate judge’s R&R. *Id.* at 155; *United States v. Walters*, 638 F.2d 947, 949–50 (6th Cir. 1981).

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objected to the R&R, this Court may adopt the R&R without further review. Moreover, having conducted its own review of the petition and record, the Court agrees with the conclusions in the R&R.

Accordingly, the Court **ADOPTS** Magistrate Judge Knepp's R&R and incorporates it fully herein by reference. The Court **DENIES** Winchester's habeas petition. Furthermore, the Court certifies that no basis exists upon which to issue a certificate of appealability.<sup>6</sup>

IT IS SO ORDERED.

Dated: January 24, 2019

s/ *James S. Gwin*  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>6</sup> 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).